

ENTER: January 22, 2014

**IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
 CHARLESTON DIVISION**

**IN RE ETHICON, INC. PELVIC
 REPAIR SYSTEM PRODUCTS
 LIABILITY LITIGATION**

MDL 2327


 JOSEPH R. GOODWIN
 UNITED STATES DISTRICT JUDGE

THIS DOCUMENT RELATES TO:

Priscilla Anderson v. Ethicon, LLC et al
Case No. 2:13-cv-24830

MOTION TO AMEND COMPLAINT

COME NOW Plaintiffs Priscilla Anderson, and hereby move this Court, pursuant to Rule 15 of the Federal Rules of Civil Procedure for leave to amend Plaintiffs' Complaint to add Ethicon, Inc., as a party Defendant, in accordance with the attached Amended Complaint. In support of this motion the Plaintiffs state as follows:

Plaintiffs filed their Complaint on October 8, 2013 against Defendants Ethicon, LLC, and Johnson and Johnson alleging injuries from the Prosima product she had implanted. Ethicon, Inc. was involved in the design, manufacture, packaging and labeling of the Prosima, including that which Plaintiff had implanted. However, Plaintiffs mistakenly did not include Ethicon, Inc. as responsible for the design, packaging and labeling of the Prosima. This Court should allow Plaintiff leave to amend her Complaint to add Ethicon, Inc. as a Defendant pursuant to Federal Rule of Civil Procedure 15.

Rule 15 of the Federal Rules of Civil Procedure provides that once a responsive pleading has been served, a complaint may be amended "by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires ..."

Fed. R. Civ. P. 15. In the absence of any undue delay, bad faith on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, or futility of amendment, the leave sought should be freely given. *Foman v. Davis*, 371 U.S. 178, 182 (1962) (internal citations omitted).

Plaintiffs should be given leave to freely amend to add Ethicon, Inc. as a Defendant for injuries resulting from the Prosima product she had implanted. Ethicon, Inc. had substantial involvement in the design, packaging and labeling of the Prosima, which Defendants Johnson and Johnson, Ethicon, LLC, and Ethicon, Inc. marketed, sold and distributed, including that which was implanted in Plaintiff that is the subject of this cause of action. Defendants will not be prejudiced by this amendment as this case is still in its early stages of discovery with Plaintiffs having just recently provided their Plaintiff Profile Form to Defendants Ethicon, LLC and Johnson and Johnson, and nothing further is required for prosecution of this action at this time, including any action on the part of Defendants. For the same reason, there will be no undue delay by allowing the amendment. Plaintiffs have attached a proposed Amended Complaint as Exhibit A. Plaintiffs have also attached a Proposed Order granting this Motion.

WHEREFORE, Plaintiffs request the Court grant their Motion to Amend to add Ethicon, Inc. as a party Defendant.

Date: January 6, 2014

Respectfully submitted,
/s/ Derek H. Potts

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CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2014, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participants registered to receive service in this matter.

s/Derek H. Potts
Derek H. Potts